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Supreme Court, U.S.
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NO. 95-186

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

MAURICIO RUEBEN
Petitioner

VS.

THE UNITED STATES OF AMERICA
Respondent

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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22 pp

QUESTION PRESENTED

I. Whether the Fifth Circuit Court of Appeals' ruling that a defendant is not entitled to an evidentiary hearing to meet his burden of proving the government's refusal to follow a plea agreement was based upon an unconstitutional motive:

a) Is in conflict with this Honorable's Court's decision in Wade v. United States, infra; and

b) Is constitutionally infirm in that it is in violation of the Due Process Clause.

LIST OF PARTIES IN APPELLATE COURT

Mauricio Rueben,

Appellant,

United States of America,

Appellee

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REFERENCE TO OPINIONS OF LOWER COURT

The opinion of the Fifth Circuit Court of Appeals is reproduced in the appendix.

JURISDICTION

The Court of Appeals had appellate jurisdiction over the district court's final judgment in this criminal case, pursuant to 18 U.S.C. § 3742 and 28 U.S.C. § 1291. The panel's order was entered on March 31, 1995. See A-3. Consistent with this Honorable Court's Rule 13, this Petition is timely filed. This Court's jurisdiction in the instant case is based on 28 U.S.C. § 1254(1), and United States Supreme Court Rule 10.

CONSTITUTIONAL PROVISION AT ISSUE

The Due Process Clause of the Fifth Amendment to the United States Constitution states:

> "...[N]or shall any person be deprived of . . . liberty . . . without due process of law."

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked pursuant to the indictment filed in the United States District Court for the Southern District of Texas, Houston, Division.

The Petitioner, Mauricio Reuben, was originally indicted on April 18, 1991, by a federal grand jury in the Southern District of Texas. A third superseding indictment was filed August 8, 1991, charging Appellant in Count 1 with conspiracy to possess with intent to distribute in excess of 1,000 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846; in Count 2 with conspiracy to commit Interstate Travel In Aid of Racketeering ("ITAR"), in violation of 18 U.S.C. § 1972 and 18 U.S.C. § 371; in Count 15 with possession with intent to distribute and distribution

in excess of 50 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c) and 18 U.S.C. § 2; in Counts 13, 14, 16, 26 and 97 with ITAR, in violation of 18 U.S.C. §§ 1952 and 2; in Count 41 with conspiracy to commit money laundering, in violation of 18 U.S.C. §§ 1956 and 2; in Counts 38, 40, 53, 55 and 60 with money laundering, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i) and 2; in Counts 12, 25, 27, and 96 with possession with intent to distribute and distribution in excess of 100 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(vii); in Count 43 with conspiracy to structure cash received in business/trade, in violation of 26 U.S.C. 7203, 6050I(F)(1)(A), (B), and (C) and 7206, all in violation of 18 U.S.C. § 371; in Counts 54 and 62 with structuring cash received in violation of 26 U.S.C.

6050I(A) and 7203; and in Count 61 with structuring a currency transaction, in violation of 31 U.S.C. § 5324(A) and 18 U.S.C. § 2.

On February 13, 1993, Petitioner appeared before the Honorable Lynn N. Hughes, United States District Judge for the Southern District of Texas, Houston Division, and entered a plea of guilty to Counts 1 and 38 of the indictment, pursuant to a written plea agreement.

The plea agreement provided that the government would file a motion for downward departure, pursuant to U.S.S.G. § 5K1.1, if in its discretion Petitioner was determined to have provided substantial assistance.

Petitioner was interviewed several times by the government regarding his participation in the criminal activity. During this interview process, the

government began to question his truthfulness and eventually concluded that he was not fully admitting his own guilt. In turn, the government, acting upon its discretion, refused to file the motion for downward departure on the belief that the Petitioner did not provide substantial assistance.

In response to the government's position, Petitioner moved for specific performance of the plea agreement, or in the alternative to withdraw his plea of guilty. Additionally, Petitioner filed a motion for discovery, requesting the statements of all co-defendants pursuant to Fed. R. Crim. Proc. 32(e). The government was relying on the statements of other cooperating co-defendants in formulating the position that the Petitioner was not being truthful. The motion for discovery was denied beyond

that of the notes taken by the government during the Petitioner's debriefing.

Following a non-evidentiary hearing, the district court determined that the government had made a prima facie showing that it had a rational basis for refusing to file a substantial assistance motion under § 5K1.1 of the sentencing guidelines. On January 24, 1994, the district court sentenced Appellant to imprisonment for a term of three hundred sixty (360) months.

ARGUMENT

I.

THE PETITIONER WAS DENIED DUE PROCESS BY THE DISTRICT COURT'S DENIAL OF AN EVIDENTIARY HEARING NECESSARY TO SHOW THE GOVERNMENT ACTED UNCONSTITUTIONALLY IN REFUSING TO FOLLOW A PLEA AGREEMENT

In alleging a breach of a plea agreement, a defendant bears the burden of proving the breach. In providing that the government breached a particular provision of a plea agreement, where they retained discretion to act, it must be shown that the government's failure to perform was due to some "unconstitutional motive." See United States v. Wade, ____U.S.____ 112 S. Ct. 1840, 118 L.Ed.2d 524 (1992. If the prosecutor's exercise of discretion exceeds constitutional limitations, the district court can enforce a plea agreement. Id.

In the instant case, the panel

accepted the district court's conclusion that the government's exercise of discretion was justifiable, and was not so arbitrary to be unconstitutional. (Appendix, p. 5). The panel further found that had Rueben shown that the government arbitrarily found that he failed to provide substantial assistance, or that they had an unconstitutional motive, Rueben would be entitled to relief. (Appendix, p. 16).

The panel held that Rueben did not meet his burden because he only made general allegations that he provided substantial assistance. (Appendix, p. 17). Id. In conjunction with this finding, the panel further found that Rueben was not entitled to an evidentiary hearing. (Appendix, p. 18). The panel's ruling is based upon an erroneous premise. Further, the panel stated that

the government presented its interview notes, which reflected that Rueben's statements were inconsistent with those of his co-defendants and were not completely truthful. This contention was never proved since it was only the government's proffer and they presented no evidence to substantiate this position. The entire purpose of Rueben's filing his Motion for Discovery and Inspection to Prepare for Hearing for Specific Performance to Enforce the Plea Agreement was to disprove this point. The district court in denying Rueben this discovery precluded his ability to substantiate that the government acted arbitrarily and/or unconstitutionally.

As argued in the district court, and submitted in Appellant's brief, Rueben requested that he be allowed the opportunity to review the statements of

his co-defendants and that he be allowed to confront and cross-examine these persons. See Brady v. Maryland, 373 U.S. 83 (1963), Fed. R. Crim. Pro. 16, 26, and 32. Without such an opportunity, there was not any way to determine whether the government acted arbitrarily in arguing that Rueben was not truthful, and, thus, had not provided "substantial assistance."

This Honorable Court has ruled that in contesting the actions of the government in refusing to file a "substantial assistance" motion, a defendant has a right to an evidentiary hearing if he makes a "substantial threshold showing." United States v. Wade, 112 S. Ct. at 1844. In the instant case, the Petitioner made such a showing before the district court.

Prior to sentencing, Petitioner showed that not only did he fully disclose

his and others' participation in the criminal activity, he was brought to court for three consecutive days in anticipation of providing testimony. The government's holding him out as their witness directly resulted in a co-defendant pleading guilty. Nevertheless, the government argued he had not been truthful based on the statements of other co-defendants.

By filing his motion to enforce the plea agreement, Petitioner raised the issue of "bad faith" and "arbitrariness" on the part of the government. This was unlike the defendant in Wade, who only sought enforcement of the plea agreement at the time of sentencing, and only on appeal argued that the government acted "arbitrarily" and in "bad faith." Clearly, the instant case is distinguishable from the failure to make a "substantial threshold showing," as found

by this Court in Wade. Finally, Petitioner openly disputed the claims of the government and sought the co-defendants statements and filed a "Motion For Ad Testificandum" in order to confront and cross-examine these individuals. Simply put, this was literally the only means to show the government was acting "arbitrarily" and in "bad faith," and thus, motivated by unconstitutional reasons. Petitioner clearly made a showing, outside of his assistance, to meet the threshold which entitled him to receive the requested statements and/or an evidentiary hearing.

The panel has rendered an opinion that effectively deprived the Petitioner of the means of making the requisite showing of a breach of a plea agreement, as established in United States v. Wade, supra. Therefore, a compelling basis

exists for this Court to grant the instant Petition for Writ of Certiorari.

CERTIFICATE OF SERVICE

I hereby certify that forty (40) copies of the foregoing Petition for Writ of Certiorari and its Appendix were mailed by the undersigned to the United States Supreme Court on the 28 day of July, 1995. I also certify that true copies of the foregoing Petition of Writ of Certiorari were mailed to the following parties, via United States mail:

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